IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 2 of 2006 (S/B)

Col. Punit Sethi (IC-406621)
Attached to HQ Infantry Brigade
C/O 56 APO

.... Petitioner

Vs

1. Union of India through Secretary Ministry of Defence, South Block, New Delhi
2. General Officer Commanding, 2 Corps, C/o 56 APO
3. General Officer Commanding, 14 Infantry Division, C/o 56 APO
4. Commander, 116 Infantry Brigade, C/o 56 APO
5. Station Commander, Ambala Cantt

..... Respondents

Sri Lalit Kumar, learned counsel for the petitioner
Sri V.B.S. Negi, learned Standing Counsel (Central) for the respondents

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

(a) To declare the attachment of the petitioner HQ 22 Artillery Brigade at Meerut and HQ 98 Armed Brigade at Patiala in connection with courts of inquiry against him as illegal and void.

(b) To issue a writ of 'Certiorari' to quash the court of inquiry proceedings held against the petitioner at HQ 22 Artillery Brigade at Meerut and HQ 98 Armed Brigade at Patiala, declaring

the same as illegal, void and unenforceable in law.

(c) To restrain respondents 2, 3 and 4 from initiating any action against the petitioner on the basis of above two courts of inquiry during the pendency of this writ petition.

(d) To award exemplary cost and compensation to the petitioner as against the respondents for infringement of petitioner's Fundamental Rights as also for subjecting him to immense mental, physical and financial harassment.

(e) To grant any other relief which the Hon'ble Court may deem fit, proper and equitable on the facts and circumstances of the case.

2. Brief facts of the case as narrated by the petitioner in the writ petition are that the petitioner was commissioned as an officer in the Corps of Engineers in the Regular Army. In August 2001, the petitioner was posted as Commander Works Engineer (CWE), Ambala Cantt, where Respondent No.5 was posted as Station Commander. In May, 2003, the petitioner came to learn that Respondent No.5 with the help of one of the Garrison Engineers a subordinate officer under the petitioner was indulging in a lot of malpractices. The petitioner vide his letter dated 28.05.2003 made a written complaint to higher Headquarters against the said Respondent No.5 Thereafter, the petitioner came to know that a number of baseless complaints were being made against the petitioner by anonymous/pseudonymous persons at the behest of Respondent No.5. In consequence of the said complaints, a court of inquiry was held against the petitioner on the orders of H.Q. Western Command vide their convening

order dated 10.01.2004. The said court of inquiry commenced its proceedings on 10.02.2004 and concluded the same. Meantime, the petitioner having got selected for the post of General Manager (Technical) was posted at National Highways Authority of India (NHAI) on deputation where he reported for duty on 08.03.2004. The petitioner remained at NHAI for a period of four months till the Army Headquarters while exercising its power under Army Instructions 30/86 on the request of GOC-in-C Western Command, vide its letter dated 27.07.2004 ordered petitioner's attachment with HQ 116 Infantry Brigade till finalization of disciplinary case pending against him. In compliance with the aforesaid order of the Army Headquarters dated 27.07.2004, the petitioner reported to HQ 116 Infantry Brigade on attachment under AI 30/86 for participating in the disciplinary case pending against him since February, 2004. On finding no substantial evidence against the petitioner in the court of inquiry conducted when he was Commander Works Engineer, Respondent Nos.2, 3 and 4 sent the petitioner on attachment to HQ 22 Artillery Brigade at Meerut to face another court of inquiry. On finding no substantial evidence against the petitioner even in the second court of inquiry held at Meerut, the Respondent Nos.3 and 4 sent the petitioner on attachment to HQ 98 Armed Brigade at Patiala (Panjab) to face yet another court of inquiry into the charged of his alleged absence without leave in February, 2004 ignoring the fact that during that period the petitioner was posted at NHAI, as also an executive direction contained in Note 6 to Rule 22 of Army Rules. Feeling aggrieved, the petitioner has come up in the writ petition.

3. We have heard learned counsel for the parties and perused the entire evidence available on record.

4. The petitioner vide order dated 27.07.2004 was attached with HQ 116, Infantry Brigade under the Army Instructions 30/86 till the finalization of disciplinary case pending against him since February, 2004. This HQ Brigade is at Dehradun. The Army Instructions 30 empowers the competent authority to attach an officer against whom the disciplinary action is contemplated and in exercise of that power, the petitioner was attached for the reason that court of inquiry was being held under Section 107 in accordance with the procedure laid down under Section 108 of the Army Rules, which is a fact finding inquiry any after the complete facts are reported by the court of inquiry, the disciplinary proceedings remained contemplated.

5. After the receipt of the report of the court of inquiry where a charge has already been established prima facie against the concerned officer, a decision is taken for investigation of the charge under Rule 22 of the Army Rules, 1954. Under sub-rule (2) of Rule 22 of the Army Rules, the Commanding Officer is entitled to dismiss the charge if he is satisfied that evidence does not show that the offence under the Act has been committed. Under sub-rule (3) of Rule 22 of the Rules, if the commanding officer is of the opinion that the charge ought to be proceeded with, he shall within a reasonable time dispose of the case under section 80 in accordance with the manner and form in Appendix III or refer the case to the proper superior military authority or adjourn the case for purpose of having the evidence reduced to writing. After taking down the summary of evidence and statement (if any) in pursuance of Rule 23 of the Army Rules, the said evidence and statement shall be considered by the commanding officer under Rule 24 of

the Army Rules who shall thereafter (a) remand the accused for trail by a court-martial or (b) refer the case to the proper superior military authority for necessary action or (c) if he thinks it desirable, he shall re-hear the case and he can either dismiss the charge or dispose it of summarily. In case of remand of accused for disposal of a charge against him by an authority under Sections 83,84, 85 to deal summarily with that charge, under sub-rule (1) of Rule 26 of the Army Rules, the summary of evidence shall be delivered to the concerned officer free of cost as soon as possible and the accused shall have full liberty to cross-examine any witness against him, and to call any witness and make a statement in his defence and the authority empowered under Sections 83,84 or 85 to deal summarily with a charge against an officer concerned, shall hear the evidence in the presence unless the charge is dismissed or unless the accused has consented in writing to dispense with the attendance of the witnesses. The framing of the charges begins under Rule 28, 29, 30, 31 and 32 of the Army Rules. Rule 28 of the Army Rules deals with the charge sheet and the charges framed therein against the accused which provides that the chargesheet shall contain the whole issue or issues to be tried by a court-martial at one time. Therefore, the stage of framing of the chargesheet comes when the commanding officer after holding the inquiry under Rules 22 and 23 of Army Rules recommends for the court martial proceedings and not before that. Rule 29 of the Army Rules provides for commencement of chargesheet which provides that the chargesheet shall begin with the entire description of the accused. Rule 30 of the Army Rules deals with contents of the charge which provides that in one chargesheet only one offence should be described and no offence should be described with regard to other charges. It provides that each

charge shall state one offence only and in no case shall an offence be described in the alternative in the same charge. Rule 31 of the Army Rules deals with the signature on charge-sheet which provides that the charge-sheet shall be signed by the commanding officer of the accused and shall contain the date and place of such signature. Under Rule 32 of Army Rules, the validity of charge-sheet has been provided which provides that a charge-sheet shall not be invalid merely be reason of the fact that it contains any mistake in the name or description of the person charged.

6. Rule 28 of the Army Rules provides to take a decision for framing of these three charges provided under Rule 24 of the Army Rules and in the instant case the court of inquiry has submitted its report and the disciplinary authority has issued a show cause notice for hearing on the charges on the basis of the facts reported by the court of inquiry, therefore, we cannot quash the proceedings under Rule 22 of the Army Rules being without jurisdiction.

7. In so far as the prayer No.1 is concerned, both the orders have been served and the petitioner has come back to Dehradun at HQ 116, therefore, the prayer No.1 has been rendered infructuous. So far as prayer No.2 is concerned, as mentioned above since the court of inquiry has submitted its report and the disciplinary authority has issued the show cause notice for hearing on the charges on the basis of the facts reported by the court of inquiry, therefore, the prayer No.2 also has been rendered infructuous. It is pertinent to mention here that the attachment orders have not been challenged by the petitioner in this writ petition.

8. So far as Prayer No.3 is concerned, the Army Rules provides action to be taken on receipt of the report of the court of inquiry and which is fact finding inquiry, therefore, the Prayer No.3 also cannot be granted at this stage. In view of these facts and circumstances of the case, we are also not inclined to grant Prayer Nos.4 and 5.

9. Learned counsel for the petitioner drew our attention on Army Instruction 30 which reads as under:-

> *30. Attachment of officers (to other units for) disciplinary purposes.*
> *1. Officers against whom disciplinary action is contemplates may, where necessary, be attached to other units, at the discretion of Army Headquarters or GOC-in-C Command concerned for the purpose of investigation and progress of the disciplinary case. "However, such attachment will be ordered only when a prima facie case against him is established and not during investigation stage by a Court of Inquiry, even for officers whose character and military reputation is likely to be material issue at the Court of Inquiry. In exceptional cases where as Officer's continued retention in his appointment say as CO, is not desirable, he may be attached to another unit for formation even at the commencement of Court of Inquiry."*
> *2. During the attachment period the officers will continue to be held against the appointment held by them immediately before attachment and no replacement will be made until completion of the disciplinary proceedings.*
> *3. This supersedes AI 106/60.*

10. On the strength of the aforesaid provisions and on the basis of the fact that the petitioner was on deputation, the learned counsel for the petitioner submitted that the attachment order and initiation of inquiry was bad as the petitioner was on deputation with NHAI.

11. The submission of the learned counsel for the petitioner is misconceived. Being on deputation, the petitioner retained his lien in the armed force and the competent authority has passed the attachment order in accordance with the army instructions quoted above, therefore, the argument of learned counsel for the petitioner is rejected.

12. For the reasons recorded above, the writ petition is devoid of merit and is hereby dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

May 2, 2006.
Rajeev Dang